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628700—45——1

In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 1059

SECURITIES AND EXCHANGE COMMISSION, PETITIONER

v.

LONG ISLAND LIGHTING COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of the Securities and Exchange Commission, prays that a writ of certiorari be issued to review the judgment of the United States Circuit Court of Appeals for the Second Circuit, entered March 14, 1945, which affirmed the judgment entered December 21, 1944, by the United States District Court for the Eastern District of New York.

OPINIONS BELOW

The opinions in the Circuit Court of Appeals (R. 16–32) are not yet reported. The opinion of the District Court (R. 8–13) is not yet reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered March 14, 1945 (R. 43). The juris-

diction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Pending administrative proceedings instituted by the Commission, after a complaint by preferred stockholders, to determine whether a recapitalization plan, challenged as contrary to the fair-and-equitable and public-interest standards of the Holding Company Act, should be subjected to those standards (*inter alia*, through revocation of an expressly revocable exemption order), the Company involved undertook to consummate the plan. The question presented is whether a federal district court has jurisdiction to issue an injunction so that the purpose of the administrative proceeding will not be frustrated by a *fait accompli*, and if so, whether the Commission has standing to invoke such jurisdiction.

STATUTES INVOLVED

The pertinent statutory provisions are set forth in the Appendix *infra*, pp. 21–27.

STATEMENT OF FACTS

(a) *Nature of the Proceeding Below*

This action was instituted by the Securities and Exchange Commission to enjoin respondent, Long Island Lighting Company, from completing efforts to consummate a plan of recapitalization

under New York state law, pending determination by the Commission in an administrative proceeding of the question whether the rights of stockholders sought to be affected by such plan should be subject to the reorganization standards of Section 11 of the Public Utility Holding Company Act of 1935 (Act of August 26, 1935, c. 687, 49 Stat. 803, 15 U. S. C. § 79(a), et seq. Upon the allegations of the complaint, the Commission applied for a temporary injunction, which the district court, after hearing and argument, denied for lack of jurisdiction. The court below affirmed, one judge dissenting.

(b) *The Proceedings before the Commission*

The facts, which are not in dispute, may be summarized as follows:

Long Island, a holding company as defined in Section 2 (a) (7) of the Act, was exempted from the registration and regulatory provisions of the Act by order of the Commission dated March 27, 1936. (R. 2.) That order was expressly subject to revocation in the event the Commission should find, after opportunity for hearing, that the circumstances which gave rise to its issuance no longer exist.[1]

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[1] In the findings and opinion accompanying its order of March 27, 1936, the Commission stated (R. 2):

"Section 3 (c) provides that the Commission shall revoke such order whenever it shall find that the circumstances which gave rise to its issuance no longer exist. The provisions of Section 1 (c) and 3 (d) are also sufficient to authorize the

On November 4, 1944, a committee purporting to represent the holders of some $1,300,000 par value of Long Island's preferred stock petitioned the Commission to reopen the exemption proceedings, stating that since the issuance of the 1936 exemption order dividend arrears in excess of $10,000,000 had accumulated on the preferred stock, and that the Company was endeavoring to carry out a plan of recapitalization unfair to the preferred stockholders, subject only to such authorization as was necessary under state law from the Public Service Commission of the State of New York. (R. 2.)

On November 10, 1944, the Commission instituted administrative proceedings to determine whether Long Island's exemption should be revoked in whole or in part. The broad question raised was whether, as a result of changed circumstances, including the accumulation of preferred dividend arrears and the company's allegedly unfair plan, the Commission should find it "detrimental to the public interest or the interests of investors or consumers" to leave in force an

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Commission to modify or amend its order if it shall find that the exemption is detrimental to the public interest, or that of investors or consumers, by reason of any activities of the applicant or of any such subsidiary company in interstate commerce, or directly affecting or burdening interstate commerce. Of course, no such revocation or modification of the order can be made without first giving the parties in interest due notice and opportunity for hearing." (1 S. E. C. 345, 346 (1936)).

exemption from any provision or provisions of the Act.[2] (R. 2, pars. 3–4). Other important subsidiary questions of public interest were whether the securities structure of Long Island and the distribution of voting power are such as to require changes to conform to the corporate simplification standards of Section 11 (b) (2) of the Act;[3] whether the pending plan of recapitalization is so offensive to the "fair and equitable" standard of Section 11 as to require that it be subject to the

[2] Section 3 (a) of the Act and Section 1 (c) circumscribe the exemption which may be granted to holding companies, although predominantly intrastate, to the extent that the Commission finds the exemption detrimental to the public interest or the interest of investors or consumers by reason of activities in interstate commerce or directly affecting or burdening interstate commerce. Appellee's activities in these respects are in issue in the proceedings pending before the Commission. *Cf.*, e. g., *Niagara Hudson Power Corporation, et al.*, Holding Company Act Release No. 5115, where the Commission, upon a finding that a holding company offending the provisions of Section 11 (b) (2) was engaged in interstate commerce and in activities directly affecting or burdening interstate commerce, denied the holding company an exemption from the provisions of Section 11 (b) (2) without deciding whether the specific requirements of Section 3 (a), in respect of the predominantly intrastate nature of its business, were met.

[3] Section 11 (b) (2) of the Act imposes upon the Commission the duty to require that each registered holding company, and each subsidiary thereof:

"* * * shall take such steps as the Commission shall find necessary to ensure that the corporate structure or continued existence of any company in the holding-company system does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holders, of such holding-company system."

safeguards provided in that Section; and whether the plan is so inadequate as to leave the Company in need of further reorganization to meet the standards of Section 11 (b) (2).[4] The proceeding was broadened by orders dated November 21 and 22, 1944, whereby the Commission first instituted, and then consolidated with the pending proceeding, a separate proceeding under Section 2 (a) (7) (B) of the Act to determine whether certain persons and corporations owning or controlling substantial amounts of Long Island's outstanding common stock exercise such a controlling influence over its management or policies as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that they, or any one or more of them, be subject to the obligations, duties and liabilities imposed by the Act upon holding companies.[5] (R. 2–3.) A

[4] Section 11 (d) of the Act empowers the Commission to apply to a district court to enforce compliance with orders issued pursuant to Section 11 (b) and contemplates, among other methods of enforcement, effectuation of a "fair and equitable reorganization plan which shall have been approved by the Commission after opportunity for hearing." Section 11 (e) provides that a company subject to such provisions may submit to the Commission a voluntary plan of compliance, which must be "fair and equitable to the persons affected by such plan" before it can be approved by the Commission; and the company may request the Commission to apply to a district court to enforce the plan which the Commission has approved.

[5] Two of the respondents in these proceedings were Delaware corporations and therefore presumably not entitled to exemption under Section 3 (a) (1) if found to be holding companies with respect to Long Island, a New York corporation.

determination by the Commission adverse to any of the respondents in either branch of the consolidated proceeding would subject Long Island and its plan of recapitalization to the jurisdiction, scrutiny, and approval of the Commission and the federal courts under the applicable standards of the Act either as a holding company, or as a subsidiary of a holding company, required to register under the Act.

The hearing in the consolidated proceeding was ordered to convene on December 19, 1944 (R. 3, par. 5). On the preceding day, December 18, 1944, the Commission learned through the public press that Long Island was undertaking to consummate the plan under New York state law without awaiting a determination whether the plan should be subjected to scrutiny under the Holding Company Act. Long Island had not advised the Commission that the New York Public Service Commission had acted favorably on the plan and that the Company was proceeding immediately to consummate the plan. The New York Commission, by order dated December 14, 1944, had allowed Long Island thirty days to consummate the plan and would doubtless have allowed additional time.[6]

[6] The preferred stockholders' brief, *amicus curiae*, submitted in the court below, pointed out that the preferred stockholders, as objectors, had thirty days to petition for rehearing and request the New York Commission to modify or set aside its order under Section 22 of the New York Public Service Law.

(c) *Necessity for equitable relief to safeguard the public interest and the interests of investors*

The record does not describe the plan in detail. The complaint states that it is a plan of recapitalization affecting the relative rights of more than 10,000 public investors in many states (R. 3–4, 5; pars. 7, 12).[7] The complaint alleged (R. 4):

> There is serious doubt whether the said plan of recapitalization of the Long Island Lighting Company is fair and equitable to the persons affected thereby, and whether if it were presented to the Commission it would be found to meet the standards of the Act prescribed by Congress for the protection of investors. It is also doubtful, because of the unsatisfactory capitalization

[7] The brevity of the complaint is attributable in part to the necessity for instituting the action below within less than 24 hours after the Commission learned of the company's actions. Since the district court's decision rested exclusively on jurisdictional grounds there was no necessity or occasion for enlarging on the brief allegations in the complaint. In our brief in the court below we submitted the following summary of the terms of the plan and no question was raised by Long Island as to the adequacy of this summary:

"Under the plan preferred stockholders are to surrender 40% of all their contractual rights, including their preferential claim to current dividends, and liquidation and redemption rights, except that dividends on the preferred stocks accumulated and unpaid since 1938, aggregating some $10,000,000, will remain unpaid and will continue to represent a prior claim to available income *vis-a-vis* the new common stock proposed to be issued. 50.3% of such new common stock will be distributed to preferred stockholders in exchange for the rights which they are to surrender."

structure of the company, if the said plan were put into effect, that the plan could be found by the Commission to be in the public interest and for the interests of investors or consumers.[8]

The Commission, as a litigant, in order to avoid prejudging an issue which might come before it in its quasi-judicial capacity, limited itself to alleging its "serious doubt" as to the fairness and adequacy of the plan under Holding Company Act standards. Its instructions to its counsel to file the complaint for injunction represented, as the dissenting judge below observed, the Commission's conclusion that the action of the company sought to be enjoined was sufficiently likely to prejudice the interests which the Commission has a statutory obligation to protect to warrant seeking equitable relief to preserve the status quo.

The New York State Public Service Commission, which had fully considered the plan of recapitalization, had condemned it as unfair both in the colloquial sense and in the light of its

[8] In paragraph 11 of the complaint the Commission further alleged (R. 4–5):

"In the event the above described proceedings pursuant to Section 3 (a) or 2 (a) (7) (B) of the Act were to result in subjecting Long Island Lighting Company to the provisions of Section 11 of the Act, it is probable that a reorganization of the company on a fair and equitable basis, substantially at variance with the terms and conditions of the present plan, and with due regard to the public interest and the interest of investors and consumers, would be ordered by the Commission pursuant to Section 11 (b) (2) of the Act."

understanding of Holding Company Act standards, although declaring itself lacking in power to rectify the situation under state law. The plan had been the subject of proceedings before the New York Commission since February, 1944. In an interim opinion dated July 27, 1944, that Commission indicated that in numerous respects the plan dealt unfairly with the interests of preferred stockholders, and stated, among other things (R. 3–4):

> It is quite apparent that the common stockholders do not intend that the management and control of the company shall pass out of their hands, regardless of the equities of the situation. But if they sincerely believe that the plan will actually deprive the interests which have controlled the company of their control in the future, what objection do they have to giving all stockholders voting rights in proportion to their claims against the company?
>
> The power of the Commission to remedy this condition directly is nil. The Securities and Exchange Commission has dealt rather summarily with such conditions in companies under their jurisdiction, but we have no power to compel a company to readjust its stocks or voting rights in accord with what is considered sound finance and equitable considerations. We can only approve or disapprove, pointing out the facts and the regards in which any proposal fails to deal justly and wisely with the

interests affected. Counsel for the company argues that they have "made a sacrifice" because they could have sold their stock prior to the stockholders' meeting of April 25, 1944 for at least eleven-sixteenths dollars per share and received $8.25 for 12 shares (brief p. 11), whereas under the proposed plan each holder of 12 shares is to receive only $5.00 stated value in new common stock. The extent to which the common stockholders could properly claim the offer is magnanimous and is a sacrificial offering may be open to debate. Having received in recent years four times the stated value of their common stock which would have been more than sufficient to pay all arrearages on the preferred stock, it hardly behooves them to assert their great virtue. If they had had as much consideration for the preferred stockholders as they purport to have now, the company could have avoided the non-payment of preferred dividends for six years.

On December 14 the New York Commission issued an order authorizing the plan after certain minor modifications. Two of the five members of that Commission declined to vote on the entry of the order for the stated reason that proceedings under the Holding Company Act with respect to Long Island were pending before the Securities and Exchange Commission and were at a crucial stage (R. 4, par. 8).

Although the Securities and Exchange Commission assumed that the company's action in

filing the charter amendment with the Secretary of State of New York had effectuated, so far as state law is concerned, the change of security holders' rights contemplated by the plan, it believed that there was still time to prevent an alteration of their rights beyond the possibility of rectifying the situation under the "fair and equitable" standard of the Holding Company Act.[9] No steps had been taken to make physical changes in the outstanding securities of the company to reflect the changes in rights under the plan. Accordingly, the further action by way of consummation which the Commission sought to enjoin included the distribution of new common shares, in lesser amounts, to existing common stockholders, the overprinting of the preferred stockholders' existing certificates to represent the reduction of their preferential rights, and the issuance of new common shares to the preferred stockholders. The complaint alleged that (R. 5):

> The taking of the further steps to consummate the plan as described in the

[9] In *Jones* v. *Securities and Exchange Commission*, 298 U. S. 1, 15–18, it was held that an administrative proceeding to show cause why a "stop order should not be issued suspending the effectiveness of such registration statement" (i. e., suspending a license to sell securities) was analogous to a suit in equity to obtain an injunction and should be governed by like considerations. This Court there indicated to be applicable in the administrative context the equitable principles under which changes of the status quo pending a hearing and determination might be required to be restored even though no restraining order or preliminary injunction is issued.

> preceding paragraph will tend to induce trading in securities on the basis of said plan being an accomplished fact without disclosure of the fact that proceedings under the Act may require a radically different plan and may require determination of the fairness and equity of any new plan with reference to the relative rights of security holders as they existed prior to the consummation of the present plan. The result will be confusion to security holders as well as substantial difficulties in the discharge by the Commission and the federal courts of their duties with respect to the effectuation of fair and equitable plans of reorganization to comply with Section 11 (b) of the Act.

The Commission's position was and is that as a governmental agency it has standing to invoke the injunctive aid of a federal court of equity to preserve a status quo in order to prevent its statutory processes from proving nugatory and investors from having their rights altered through precipitous action of a holding company management in contravention of the purposes of the Act. While resting primarily upon general equitable power, we deem this position in no way inconsistent with, if not expressly implemented by, the enforcement provisions of the Act.

REASONS FOR GRANTING THE WRIT

1. While no constitutional issue is presented, the question is one of substantial public impor-

tance, involving the basic relationship between the federal courts and federal administrative agencies. The decision below unduly limits the jurisdiction of the courts to aid administrative agencies and permits easy evasion of their regulatory jurisdiction. The decision is novel and has given rise to divergent opinions by the three judges of the court below.

The basic issue is the power of the federal courts to use their injunctive processes to preserve the status quo pending a determination by the Commission. In the instant case, Long Island Lighting Company is a public utility holding company exempted from the operation of the Public Utility Holding Company Act by an order which is expressly revocable after notice and opportunity for hearing. The Commission gave notice of a hearing on the question of revoking the order. While this notice was outstanding, and before either hearing or decision, Long Island proposed to take action designed to make moot important objectives of the proceeding before the Commission. A primary question before the Commission was whether Long Island's existing financial structure and its plan were such as to require that the company be subjected to regulation under the Act and that its financial structure be reorganized under the "fair and equitable" standard of the Act. Long Island, in the meanwhile, was attempting to defeat the Commission's jurisdiction by consummating a

plan of reorganization of such a character that (in all probability) it could not meet the standards of the Act. Indeed, the plan was stated by the New York Public Service Commission to be lacking in fairness, a condition which it was admittedly powerless to correct. Faced with this situation, and in order to prevent nullification of its processes for protection of investors, the Commission sought the aid of the district court for an injunction to preserve the status quo, pending the Commission's determination. The court below has denied any jurisdiction to grant such relief to the Commission.

The decision is not based on any exercise of judicial discretion, but is rested solely on the theory that no matter how strong the case for an injunction, the Commission lacks standing to sue and the court lacks jurisdiction. In the present case the decision permits the effectuation of a plan affecting the interests of some 10,000 public stockholders of the company without giving those stockholders an opportunity to obtain the benefits of a determination under the standards of the Public Utility Holding Company Act designed for their protection. This would permit a misuse of the exemption provisions of the Act since it would allow companies operating under exemptions to frustrate an orderly determination of whether those exemptions should be terminated, by taking precipitous action and confronting the Commis-

sion with a *fait accompli* before it could arrive at a decision.

The granting of interlocutory relief pending the determination of a controversy, in order to prevent the controversy from becoming moot, has been a traditional form of equitable relief. With the creation of administrative agencies charged with the protection of great public interests and, as this Court has held, standing to protect those interests in court (see *Securities and Exchange Commission* v. *U. S. Realty & Improvement Company,* 310 U. S. 434) it would seem that power exists in the courts to grant administrative agencies similar interlocutory relief to preserve the status quo. The decision below denies this proposition. It is submitted that the result is contrary to the purpose of Congress in creating administrative agencies. Those agencies are intended to be effective and flexible instruments for carrying out Congressional policies. In aid of those agencies the normal powers of the courts should be available in order that the Congressional policies may not be frustrated. If a more limited approach is taken, it is believed that, as Judge Clark indicated, respondent was under a duty pursuant to the Act not to render the proceeding moot. (Cf. *Jones* v. *Securities and Exchange Commission,* 298 U. S. 1, 15–18; and see *Wartman* v. *Wartman,* 29 Fed. Cas. No. 17,210, per Taney, C. J., (p. 303)), and the case is then the normal one of enjoining, under sections 18 (f) and 25 of

the Holding Company Act, violation of a requirement or duty imposed under the Act.

At the very least, therefore, the substantial questions presented by the case, the divergent opinions of the court below, the novelty of the questions, and the serious consequences of the decision below upon harmonious relations between administrative agencies and courts in carrying out Congressional policies all suggest the importance of a decision by this Court.

2. The decision below is, we submit, incorrect and in probable conflict with decisions of this Court. As pointed out in Judge Clark's dissenting opinion, the decision of the court below is in conflict with the holding of this court in *Securities and Exchange Commission* v. *U. S. Realty & Improvement Company,* 310 U. S. 434. That case affirmed the standing of the Commission to intervene and to appeal from an adverse decision in a statutory proceeding wherein the statute did not give it such standing and wherein its sole purpose for intervention was to protect its potential jurisdiction in another type of proceeding, by preventing evasion of that jurisdiction through the pending proceeding.[10] The holding of the court below, in contrast, denies the Commission's standing to

[10] See also *In re Debs*, 158 U. S. 564, 584, 586, which was among the cases cited by this Court in the *Realty* case in support of the holding that the Commission has standing to obtain judicial aid in the maintenance of its statutory authority and the performance of its public duties. This decision the dissenting judge below characterized as a

protect the public interest entrusted to its care, statutory language conferring such jurisdiction. Not only the specific decision of the court below, but its basic approach to the function of an administrative agency and its duty and right to protect the public interest entrusted to its care, is contrary to the holding of this Court in the *Realty* case."

The court below held that there was no power in a federal court to grant the relief sought by the Commission "until by formal action of the Commission [the company] was brought within the jurisdiction of the Act which alone created the Commission and from which it alone derives authority." (R. 22.) This argument ignores the fact that, as pointed out in the dissenting opinion, the Commission did have an undisputed statutory jurisdiction which was being exercised to the fullest extent that seemed presently appropriate. Indeed the whole basis for respondent's argument

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"still broader assertion of federal power and duty." (R. 31.)

" The court below held the *Realty* case inapplicable because deemed to rest upon a "permissive rule of procedure" under Rule 24 of the Rules of Civil Procedure, and regarded standing to intervene as not implying any right to bring an original suit. But in the *Realty* case the Commission was accorded an independent standing to appeal to protect its jurisdiction, although the right to appeal is expressly denied the Commission in the exercise of its statutory functions under Chapter X. Additional difficulties with the distinction found by the majority are stated in footnote 8 to the dissenting opinion below. (R. 30.)

that the district court lacked jurisdiction to grant interlocutory relief was the absence of any charge of literal "violation" of the Act, which in turn could be urged only because Long Island had affirmatively invoked the jurisdiction of the Commission to obtain a revocable exemption under the Act. If Long Island had been confident that it was wholly outside of the reach of the statute, and had not sought an affirmative exemption order, the Commission would have been in a position to allege in an equity suit that its activities concerning the plan constituted a violation of the Act.[13] In that event the Commission would have had unquestioned standing to obtain interlocutory relief pending a judicial determination of the issue of whether Long Island is a holding company within the reach of the statute.

The approach of the majority opinions is contrary to the many admonitions of this Court that administrative agencies, in carrying out the Congressional policy, should be aided by the courts and

[13] *Electric Bond & Share Co.* v. *Securities and Exchange Commission*, 303 U. S. 419, was a suit to enjoin Bond & Share from violation of the registration provisions of the Act. While Bond & Share made no claim to exemption, a holding company which does claim to be beyond the reach of the statute could raise such an issue as a defense. Thus the only respect in which the present administrative proceeding would involve broader issues than would arise in an injunction suit is that it does concern the exercise by the Commission of such discretion as the Act confers on it with respect to exemptions—a matter relating to the exercise of administrative jurisdiction, not to the existence thereof.

should not be treated as an "alien intruder, to be tolerated if it must be, but never to be encouraged or aided." *United States* v. *Morgan*, 307 U. S. 183, 191. The same injunction was repeated in *Hecht Company* v. *Bowles*, 321 U. S. 321, and, in dealing with a situation closely analogous to the present one, this Court in *Scripps Howard Radio, Inc.* v. *Federal Communications Commission*, 316 U. S. 4, 15, sustained the implied and inherent power of reviewing courts to preserve the status quo in order "to save the public interest from injury or destruction" during the pendency of an appeal. This was stated to be in accord with "the purpose of Congress to utilize the courts as a means for vindicating the public interest. Courts and administrative agencies are not to be regarded as competitors in the task of safeguarding the public interest. *United States* v. *Morgan*, 307 U. S. 183, 190–91; *Federal Communications Commission* v. *Pottsville Broadcasting Co.*, 309 U. S. 134."

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be granted.

CHARLES FAHY,
Solicitor General.

ROGER S. FOSTER,
Solicitor,
Securities and Exchange Commission.

MARCH 1945.

APPENDIX

The Public Utility Holding Company Act of 1935, c. 687, 49 Stat. 803, 15 U. S. C. § 79a et seq., provides in pertinent part as follows:

Section 1 * * *

(c) When abuses of the character above enumerated become persistent and widespread the holding company becomes an agency which, unless regulated, is injurious to investors, consumers, and the general public; and it is hereby declared to be the policy of this title, in accordance with which policy all the provisions of this title shall be interpreted, to meet the problems and eliminate the evils as enumerated in this section, connected with public-utility holding companies which are engaged in interstate commerce or in activities which directly affect or burden interstate commerce; and for the purpose of effectuating such policy to compel the simplification of public-utility holding-company systems and the elimination therefrom of properties detrimental to the proper functioning of such systems, and to provide as soon as practicable for the elimination of public-utility holding companies except as otherwise expressly provided in this title.

DEFINITIONS

SEC. 2. (a) When used in this title, unless the context otherwise requires—

(7) "Holding company" means—

(A) any company which directly or indirectly owns, controls, or holds with power

to vote, 10 per centum or more of the outstanding voting securities of a public-utility company or of a company which is a holding company by virtue of this clause or clause (B), unless the Commission, as hereinafter provided, by order declares such company not to be a holding company; and

(B) any person which the Commission determines, after notice and opportunity for hearing, directly or indirectly to exercise (either alone or pursuant to an arrangement or understanding with one or more other persons) such a controlling influence over the management or policies of any public-utility or holding company as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in this title upon holding companies.

The Commission, upon application, shall by order declare that a company is not a holding company under clause (A) if the Commission finds that the applicant (i) does not, either alone or pursuant to an arrangement or understanding with one or more other persons, directly or indirectly control a public-utility or holding company either through one or more intermediary persons or by any means or device whatsoever, (ii) is not an intermediary company through which such control is exercised, and (iii) does not, directly or indirectly, exercise (either alone or pursuant to an arrangement or understanding with one or more other persons) such a controlling influence over the management or policies of any public-utility or holding company as to make it necessary or appropriate in the public interest or for the protection of in-

vestors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this title upon holding companies. The filing of an application hereunder in good faith by a company other than a registered holding company shall exempt the applicant from any obligation, duty, or liability imposed in this title upon the applicant as a holding company, until the Commission has acted upon such application. Within a reasonable time after the receipt of any application hereunder, the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of, such application. As a condition to the entry of any order granting such application and as a part of any such order, the Commission may require the applicant to apply periodically for a renewal of such order and to do or refrain from doing such acts or things, in respect of exercise of voting rights, control over proxies, designation of officers and directors, existence of interlocking officers, directors and other relationships, and submission of periodic or special reports regarding affiliations or intercorporate relationships of the applicant, as the Commission may find necessary or appropriate to ensure that in the case of the applicant the conditions specified in clauses (i), (ii), and (iii) are satisfied during the period for which such order is effective. The Commission, upon its own motion or upon application of the company affected, shall revoke the order declaring such company not to be a holding company whenever in its judgment any condition specified in clause (i) (ii), or (iii) is not satisfied in the case of such company, or modify the terms of such order whenever in its judg-

ment such modification is necessary to ensure that in the case of such company the conditions specified in clauses (i), (ii), and (iii) are satisfied during the period for which such order is effective. Any action of the Commission under the preceding sentence shall be by order.

SEC. 3. (a) The Commission, by rules and regulations upon its own motion, or by order upon application, shall exempt any holding company, and every subsidiary company thereof as such, from any provision or provisions of this title, unless and except insofar as it finds the exemption detrimental to the public interest or the interest of investors or consumers, if—

(1) such holding company, and every subsidiary company thereof which is a public-utility company from which such holding company derives, directly or indirectly, any material part of its income, are predominantly intrastate in character and carry on their business substantially in a single State in which such holding company and every such subsidiary company thereof are organized;

(2) such holding company is predominantly a public-utility company whose operations as such do not extend beyond the State in which it is organized and States contiguous thereto;

(3) such holding company is only incidentally a holding company, being primarily engaged or interested in one or more businesses other than the business of a public-utility company and (A) not deriving, directly or indirectly, any material part of its income from any one or more subsidiary companies, the principal business of which is that of a public-utility

company, or (B) deriving a material part of its income from any one or more such subsidiary companies, if substantially all the outstanding securities of such companies are owned, directly or indirectly, by such holding company;

(4) such holding company is temporarily a holding company solely by reason of the acquisition of securities for purposes of liquidation or distribution in connection with a bona fide debt previously contracted or in connection with a bona fide arrangement for the underwriting or distribution of securities; or

(5) such holding company is not, and derives no material part of its income, directly or indirectly, from any one or more subsidiary companies which are, a company or companies the principal business of which within the United States is that of a public-utility company.

(c) Within a reasonable time after the receipt of an application for exemption under subsection (a) or (b), the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of such application. The filing of an application in good faith under subsection (a) by a person other than a registered holding company shall exempt the applicant from any obligation, duty, or liability imposed in this title upon the applicant as a holding company until the Commission has acted upon such application. The filing of an application in good faith under subsection (b) shall exempt the applicant from any obligation, duty, or liability imposed in this title upon the applicant as a subsidiary company until the Commission has acted upon such application. Whenever the Commis-

sion, on its own motion, or upon application by the holding company or any subsidiary company thereof exempted by any order issued under subsection (a), or by the subsidiary company exempted by any order issued under subsection (b), finds that the circumstances which gave rise to the issuance of such order no longer exist, the Commission shall by order revoke such order.

Section 18 * * *

(f) Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this title, or of any rule, regulation, or order thereunder, it may in its discretion bring an action in the proper district court of the United States, the Supreme Court of the District of Columbia, or the United States courts of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this title or any rule, regulation, or order thereunder, and upon a proper showing a permanent or temporary injunction or decree or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices to the Attorney General, who, in his discretion, may institute the appropriate criminal proceedings under this title.

SEC. 20. (a) The Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as it may deem necessary or appropriate to carry out the provisions of this title, including

rules and regulations defining accounting, technical, and trade terms used in this title.

SEC. 25. The District Courts of the United States, the Supreme Court of the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this title or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this title or the rules, regulations, or orders thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of, this title or rules, regulations, or orders thereunder, may be brought in any such district or in the district wherein the defendant is an inhabitant or transacts business, and process in such cases may be served in any district of which the defendant is an inhabitant or transacts business or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 128 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 225 and 347), and section 7, as amended, of the Act entitled "An Act to establish a court of appeals for the District of Columbia", approved February 9, 1893 (D. C. Code, title 18, sec. 26). No costs shall be assessed for or against the Commission in any proceeding under this title brought by or against the Commission in any court.

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